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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,999	09/11/2003	Milton Bernard Hollander		4653

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WILLIAM ANTHONY DRUCKER  
Suite 800  
1901 L Street, N.W.  
Washington, DC 20036-3506

EXAMINER

JAGAN, MIRELLYS

ART UNIT	PAPER NUMBER
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2859

DATE MAILED: 08/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/659,999

Applicant(s)

HOLLANDER ET AL.

Examiner

Mirellys Jagan

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 6/28/04.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 67, 69 and 70 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 67, 69 and 70 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Allowable Subject Matter Withdrawn***

1. Upon further consideration of the claims, the Examiner has interpreted that the phrase “more than two divergent laser beams” in claim 67 can include a pattern of beams having at least two beams identifying the edge of the field of view and a beam in the center thereof, since at least two edge beams with a beam in the center are all ‘divergent’ beams because they do not intersect each other and travel in diverging directions from each other. Therefore, a new ground(s) of rejection is made in view of German Patent 19528590 to Schmidt based on the above interpretation.

### ***Terminal Disclaimer***

2. The terminal disclaimer filed on 6/14/04 disclaiming the terminal portion of any patent granted on this application that would extend beyond the expiration date of U.S. Patents 5,368,392 and 6,341,891 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Specification***

3. The disclosure is objected to because of the following informalities:

In the amendment filed 9/11/03, it is not clear whether line 15 of paragraph 0084 (see page 6) has been amended or if there is a typographical error. Appropriate correction is required.

### ***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 67 and 70 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 67 of copending Application No. 10/462,936.

Claim 67 of the copending application claims a device comprising a radiation detector having a field of view in combination with a laser sighting system comprising a laser and a beam splitter that emits more than two divergent laser beams (from the laser). The divergent beams are displayed as visible light spots that are mutually divergent (therefore spaced apart) onto a target surface (measurement surface area) to visibly indicate the edge of the field of view of the detector.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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6. Claim 69 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 67 of copending Application No. 10/462936 in view of claim 66 of copending Application No. 10/462936.

Claim 67 of the copending application claims a device comprising a radiation detector having a field of view in combination with a laser sighting system comprising a beam splitter that emits more than two divergent laser beams (from a laser). The divergent beams are displayed as visible light spots that are mutually divergent (therefore spaced apart) onto a target surface (measurement surface area) to visibly indicate the edge of the field of view of the detector.

Claim 67 does not claim a spot being in the center.

Claim 66 of the copending application claims a device comprising a radiation detector having a field of view in combination with a laser sighting system comprising a diffraction device that emits more than two divergent laser beams (from a laser). The divergent beams are displayed as visible light spots that are mutually divergent (therefore spaced apart) onto a target surface (measurement surface area) to visibly indicate the edge and center of the field of view of the detector.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify claim 67 by claiming that one of the spots is at the center of the field of view of the detector since claim 66 claims that this is a useful location for placing a spot to when marking the field of view.

This is a provisional obviousness-type double patenting rejection.

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7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

8. Claims 67, 69, and 70 are rejected under 35 U.S.C. 102(a) as being anticipated by German Patent 19528590 to Schmidt.

Schmidt discloses a temperature measuring device comprising:

An IR radiation detector having a field of view in combination with a laser sighting system what includes a laser and a beam splitter illuminated by the laser and emitting more than two divergent laser beams split from the single beam and projected onto a measurement area to form a pattern of visible spots mutually spaced apart to indicate to the user the field of view of the detector;

wherein the pattern has more than two spaced apart light spots to indicate the edge and center of the field of view of the detector.

### ***Response to Arguments***

9. Applicant's arguments with respect to claims 67, 69, and 70 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mirellys Jagan whose telephone number is 571-272-2247.

The examiner can normally be reached on Monday-Friday from 9AM to 4PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on 571-272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJ  
August 24, 2004



**Diego Gutierrez**  
**Supervisory Patent Examiner**  
**Technology Center 2800**